

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Timothy L. and Kari L. Kuechenmeister**

**Chapter 7**

**Debtor(s).**

**BK 04-60471 DDO**

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**UST NOTICE OF HEARING AND SECOND MOTION  
TO EXTEND TIME TO FILE COMPLAINT UNDER 11 U.S.C. § 727**

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COMES NOW the United States Trustee through his undersigned attorney, Sarah J. Wencil, and moves the Bankruptcy Court to extend the time to file a complaint objecting to the discharge of the debtor pursuant to 11 U.S.C. § 727. In support of his motion, he states the following:

1. A hearing has been scheduled in this matter on October 26, 2004, at 10:30 a.m. before the U.S. Bankruptcy Court, Courtroom No. 2, U.S. Courthouse, 118 S. Mill Street, Fergus Falls, Minnesota.
2. Any response to this motion must be filed and delivered not later than October 21, 2004, which is three days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays), or filed and served by mail not later than October 15, 2004, which is seven days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays). Local Bankruptcy Rule 9006-1.
3. This motion is filed pursuant to FED. R. BANKR. P. 4004(b) and Local Bankruptcy Rule 9013-2. The United States Trustee is moving to extend the period of time to file a complaint pursuant to 11 U.S.C. § 727. *See* FED. R. BANKR. P. 4004(b). The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), FED.R.BANKR.P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was

filed on April 21, 2004.

4. Fed. R. Bankr. P. 4004(b) provides that a motion to extend the period of time to file a complaint objecting to the Chapter 7 debtor's discharge must be filed prior to the expiration date. The last date to file a complaint objecting to the discharge of the debtors under Section 727 is September 30, 2004.

5. On July 1, 2004, a creditor, Headwaters Credit Union, has filed a complaint against the debtors alleging that one or both debtors engaged in embezzlement/larceny, intentional and malicious conversion, and fraud or defalcation.

6. According to the complaint, the debtor Kari Kuechenmeister processed loans that resulted in her receiving in excess of \$ 350,000 within the following periods prior to filing for bankruptcy (approximately \$ 300,000 of which is within one year of the filing of the bankruptcy case): \$ 32,000 on approximately October 16, 2003; \$ 49,000 on approximately November 23, 2001; \$ 24,400 on approximately April 1, 2003; \$ 32,639.54 on approximately October 3, 2003; \$ 28,000 on approximately October 15, 2003; \$ 22,497.72 and \$ 32,639.54 on approximately October 17, 2003; \$ 59,316 on approximately April 7, 2003 [to herself]; \$ 1,000 in approximately September 8, 1998 [paid off and changed to line of credit]; \$ 17,1000 on March 25, 2003; \$ 7,000 to FL Parties [ a sole proprietorship owned by the Kari Kuechenmeister] on approximately June 10, 2003; \$ 23,000 on approximately October 1, 2003 [to Tim Kuechenmeister]; \$ 22,497.73 on approximately October 3, 2003 [to Tim Kuechenmeister].

7. In the Statement of Financial Affairs, the debtors disclose no payments to creditors in excess of \$ 600 within 90 days of filing; no payments to insiders within a year of filing; no gifts within one year of filing; no transfers of property within one year of filing; no assets on Schedule A or Schedule B commensurate with the amount alleged to have been taken in the

complaint.

8. In the Schedules and Statement of Financial Affairs, the debtors do not disclose any sole proprietorship named FL Parties, which ownership is alleged in the complaint.

9. On the Schedule D, the debtors allege several secured debts owing to Headwaters Federal Credit Union totaling \$ 94,230.00; however, the complaint filed alleges that no security documents were taken out on these assets.

10. On Schedule F, the debtors allege one unsecured debt owing to Headwaters Federal Credit Union totaling \$ 5,300.00.

11. Upon information and belief, the Chapter 7 Trustee contacted the Office of the United States Trustee on approximately June 1, 2004, to state that she was contacted by Headwaters Credit Union regarding the debtors and that allegations of misdeeds were made to the Chapter 7 Trustee by the creditor.

12. On June 3, 2004, the United States Trustee wrote to the debtors for information pertaining to the period wherein the alleged wrong-doing occurred.

13. The debtors provided bank statements for November 2003 to April 2004, but did not provide statements for the prior time periods, as requested; the debtors provided tax returns; and the debtors provided insurance policies. The debtors' counsel represented that a request was made upon Headwaters Federal Credit Union for certain of the information.

14. The United States Trustee originally sought to extend the deadline to file an objection to discharge to September 30, 2004.

15. The trial for the underlying § 523 action was set for November 3, 2004.

16. The debtors, through counsel, have represented to the United States Trustee that they desire to turnover the outstanding bank statements, but that they have not been able to obtain

the bank statements from the bank through the discovery process in the adversary proceeding.

17. It appears that the information requested by the United States Trustee is currently subject to a discovery dispute in the adversary proceeding.

18. The United States Trustee requests that the time period be extended so that the United States Trustee can have access to the bank records of the debtors and such other information as may be discovered in the adversary proceeding.

WHEREFORE, the United States Trustee requests that the Bankruptcy Court extend the period of time to file a complaint to file an objection to the discharge of the debtor under Section 727 until December 30, 2004.

Dated: September 28, 2004

HABBO G. FOKKENA  
United States Trustee  
Region 12

/s/ Sarah J. Wencil  
Sarah J. Wencil  
Trial Attorney  
Office of U.S. Trustee  
Iowa Atty. No. 14014  
U.S. Courthouse, Suite 1015  
300 South Fourth Street  
Minneapolis, MN 55415  
TELE: (612) 664-5500

## **VERIFICATION**

I, Sarah J. Wencil, trial attorney for the United States Trustee, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Dated: September 28, 2004

/s/ Sarah J. Wencil  
Sarah J. Wencil  
Trial Attorney

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**MEMORANDUM OF LAW**

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The United States Trustee through his undersigned attorney, Sarah J. Wencil, files this Memorandum of Law in support of his motion to extend the time to file a complaint objecting to discharge pursuant to 11 U.S.C. § 727.

The United States Trustee requests that the Bankruptcy Court extend the period of time for him to file an objection to discharge pursuant to Federal Bankruptcy Rule 4004, which provides: “On motion of any party in interest, after hearing on notice the court may extend for cause the time for filing a complaint objecting to discharge. The motion shall be made before such time has expired.” FED. R. BANKR. P. 4004(b). The motion to extend the period of time to file a complaint to object to the discharge of the debtors must be pending in this case before September 30, 2004.

Cause exists to extend the period of time to file a complaint to deny the debtors’ discharge in this case because an allegation has been made that the debtors received large sums of money within one year prior to filing for bankruptcy, which is not disclosed on the schedules and statement of financial affairs. Extending the period is appropriate to protect the creditors of the estate.

Extending the period of time to file the discharge will not harm the debtors. The debtors are subject to Section 523 action at this time. The debtors have indicated that they desire to cooperate with the United States Trustee, but have not been able to obtain the requested documents through the discovery process in the adversary proceeding. The debtors will have the opportunity to answer the allegations raised in the complaint.

The United States Trustee respectfully requests that the Bankruptcy Court extend the period of time to file a complaint under 11 U.S.C. § 727 to December 30, 2004.

Dated: September 28, 2004

HABBO G. FOKKENA  
United States Trustee  
Region 12

/s/ Sarah J. Wencil  
Sarah J. Wencil  
Trial Attorney  
Office of U.S. Trustee  
Iowa Atty. No. 14014  
U.S. Courthouse, Suite 1015  
300 South Fourth Street  
Minneapolis, MN 55415  
TELE: (612) 664-5500

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**CERTIFICATE OF MAILING**

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I, Emily Rohr, certify under penalty of perjury that I am an employee in the Office of the United States Trustee for the District of Minnesota and am a person of such age and discretion as to be competent to serve papers.

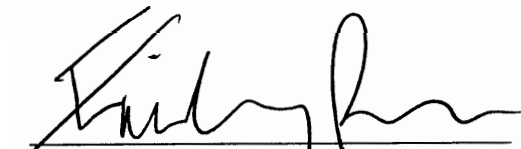
That on September 28, 2004, I served a copy of the United States Trustee's Notice of Hearing and Second Motion to Extend Time to File Complaint Objecting to Chapter 7 Discharge pursuant to 11 U.S.C. § 727, Memorandum of Law, and proposed Order in the above-referenced case by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

**Addressee(s):**

Timothy L. and Kari L. Kuechenmeister  
PO Box 1441  
Bemidji, MN 56601

Tamara L. Yon  
407 North Broadway  
P O Box 605  
Crookston, MN 56716

Robert A. Woodke  
Brouse Woodke Meyer  
PO Box 1273  
Bemidji, MN 56601

  
\_\_\_\_\_  
**Office of the United States Trustee  
Emily Rohr**



**UNITED STATES BANKRUPTCY COURT  
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**ORDER**

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At Fergus Falls, Minnesota, the \_\_\_\_\_ day of \_\_\_\_\_, 2004, the United States Trustee's Second Motion to Extend Period to File Complaint to Objection to Discharge pursuant to 11 U.S.C. § 727 came before the undersigned. Appearances are noted in the record.

Based on the pleadings, files the arguments of parties, the findings of fact and conclusions of law made on the record, the Court being fully advised of the premises –

IT IS HEREBY ORDERED: The deadline for the United States Trustee to file a complaint to object to the discharge of the debtor pursuant to 11 U.S.C. § 727 is extended through December 30, 2004.

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The Honorable Dennis D. O'Brien  
United States Bankruptcy Court